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Attorneys for the Defendant Sol

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X

Roy Den Hollander

Plaintiff on behalf of himself and  
all others similarly situated,

v.

Copacabana Nightclub, China Club, Guest House,  
A.E.R. Nightclub, Lotus, Sol, and Jane Doe  
Promoters,

Defendants.

-----X

Docket No. 07 CV 5873 (MGC)

**AFFIRMATION OF ROBERT S.  
GROSSMAN IN OPPOSITION TO  
PLAINTIFF'S CROSS MOTIONS**

I, Robert S. Grossman, an attorney admitted to practice in the State of New York and the U.S. Southern District Court of New York, affirm under the penalty of perjury pursuant to 28 U.S.C. § 1746 the following:

1. I am of counsel to the firm of Adam B. Kaufman & Associates, PLLC, counsel for the Defendant Sol (hereinafter "Defendant"), in the above entitled action. I submit this Affirmation in Opposition to Plaintiff's Cross Motions, to the extent that such Cross Motions dated December 28, 2007 call for a response.

2. Plaintiff's "Cross Motions", like the action itself, are without merit. However to avoid Plaintiff seeking a default or admission by lack of a response, I will briefly respond. In no way should the lack of a response to any particular point or accusation be deemed an admission or waiver for any purpose, and I expressly reserve the right to respond in the future, should a further response be necessary.

3. While Plaintiff's request in Cross Motion One that defendant's papers be stricken from the record is creative, the Plaintiff presents no legal authority or basis on which a Court may do so. "Cross-Motion One" appears to seek an order from the Court striking certain of the Defendants' motion papers from the record based upon the date and time that they were filed. This point is moot. As noted in Defendant's letter to Hon. Judge Miriam Cedarbaum dated November 26, 2007, Plaintiff served and filed an Amended Complaint which necessitated an Amended Motion to Dismiss Pursuant to Fed. R. Civ. P. 12(b)(6) to address the amended complaint. An Amended Notice of Motion was timely filed on December 14, 2007 (hereinafter the "Amended Notice of Motion"). Any claim that any of the initial motions were not timely is moot, and should be rejected by this Court.

4. Plaintiff's claim that he was prejudiced is without any basis as well. He was even contacted from an attorney in my office to discuss the deadlines, and I am advised that Plaintiff declined to do so. Had Plaintiff wanted or needed additional time, all he had to do was make a telephone call or send an email. Notwithstanding the obvious animosity of this case, I will continue to extend professional courtesies as I have always done. It is abundantly obvious that rather than resolve the matter on the merits and perhaps address additional time periods for the motion to be briefed, the Plaintiff prefers to continue trading barbs and will not give up any opportunity to do so, even if the point is indeed moot.

5. Plaintiff's Cross Motion Two requesting that the Defendant's Motions to dismiss be denied for failing to file a memorandum of law with its Supplemental Affirmation, or alternative striking the Defendant's Supplemental Affirmation for improperly mixing fact statements with legal arguments is also without merit. Again, Plaintiff provides no legal authority to support such a request. Furthermore, paragraph 2 of Defendant's Supplemental Affirmation of Robert S. Grossman in Further Support of Motion to Dismiss Pursuant to Fed. R. Civ. P. 12(b)(6) dated December 12, 2007 (hereinafter the "Supplemental Affirmation") states that:

Rather than resubmitting a full motion package, I **incorporate by reference** herewith, in support of this motion to dismiss the Amended Complaint dated November 20, 2007 (hereinafter the "Amended Complaint"), my Affirmation

and the **Memorandum of Law** of defendant Sol that were previously filed on November 7, 2007 in support of Defendant Sol's motion to dismiss the Complaint.

Emphasis added. Supplemental Affirmation at ¶ 2. As such, Plaintiff's contention that the Amended Notice to Motion to Dismiss is not supported by a Memorandum of Law is baseless. As well, the Court may take judicial notice of documents in its file. Moreover, the Supplemental Affirmation does not mix legal arguments and citations with assertions of fact. References made therein merely point out the Plaintiff's errors. There are no new legal authorities set forth therein.

6. As such, it is respectfully requested that the Plaintiff's Cross Motion Two be denied.

7. Cross-Motions "Three" and "Four" are directed to another Defendant/Defense Counsel, and do not require any response from the Defendant Sol.

### **Conclusion**

8. For the foregoing reasons, it is respectfully requested that the Plaintiff's Cross Motions be denied.

9. I hereby affirm that the foregoing statements made by me are true and that this affirmation has been submitted in good faith.

Dated: January 7, 2008

Adam B. Kaufman & Associates, P.L.L.C.

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Robert S. Grossman, an attorney duly admitted to practice law before the Courts of the State of New York and the United States District Court in the Southern District of New York hereby certifies that I have on **January 07, 2008** caused a copy of the Affirmation in Opposition to the Plaintiff's Cross-Motions to the to be served upon Plaintiff's counsel and the counsel for the co-defendants who have appeared in this action by causing a true and correct copy thereof to be delivered to said counsel by electronic court filing system of the United States District Court for the Southern District of New York as indicated below:

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**Civil Action No.**

07 CV 5873 (MGC)

**Certificate of Service**

Dated: Garden City, New York  
January 7, 2008

ADAM B. KAUFMAN & ASSOCIATES PLLC

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